

EXHIBIT 18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LYNNE FREEMAN, an individual,

Plaintiff

v.

TRACY DEEBS-ELKENANEY P/K/A TRACY WOLFF,

an individual, EMILY SYLVAN KIM, an individual, PROSPECT AGENCY, LLC, a New Jersey limited liability company, ENTANGLED PUBLISHING, LLC, a Delaware limited liability company, MACMILLAN PUBLISHERS, LLC, a New York limited liability company, UNIVERSAL CITY STUDIOS, LLC, a Delaware limited liability company

Defendants

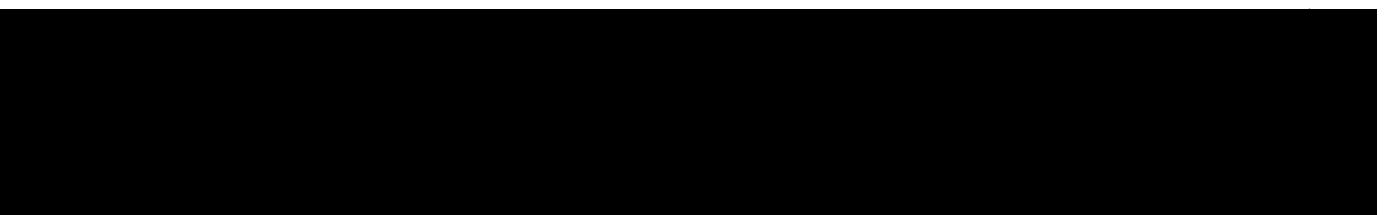
**EXPERT REPORT AND DISCLOSURE OF
CHRISTINE WITTHOHN**

PROFESSIONAL BACKGROUND AND EXPERIENCE:

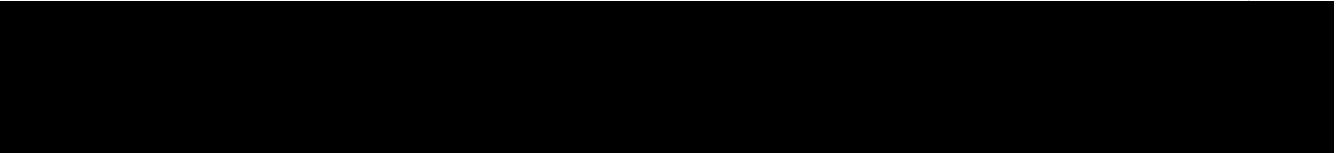
1. I have 18 years of experience as a literary agent with my own agency and 23 years of experience as a legal assistant. In addition to my professional experience, three years before I opened my own agency, I took multiple courses and workshops on both coasts for *components of story, pitching, and techniques of negotiating*, and I traveled to New York once a month for 1-2 weeks at a time, to meet with editors from all six major New York Publishing Houses (there are now five), as well as various mid-size and smaller New York publishers. I am a member of the AALA. A copy of my resume is attached to this report as Exhibit 1.

ASSIGNMENT:

2. I understand that in this case unpublished author Lynne Freeman claims that Tracy Wolff used and recast characters, storylines, etc. from her various *Blue Moon Rising* manuscripts to create Wolff's *Crave* book



3. I have been asked to offer my industry expertise to help the jury understand where, objectively, Tracy Wolff's writing career was just before writing the *Crave* series. Relatedly, I have been asked to offer my



4. For the purposes of this report, I have reviewed contracts/amendments, manuscripts, editorial notes, author edits, pitches, chapter summaries, texts, emails, websites, podcasts, interviews, sales records, royalty statements, attorney's letters, amended complaint, court filings, and depositions. A list of documents I referenced and used for this report is attached to this report as Exhibit 2.

5. My rate for expert testimony in this case is \$200 per hour.

Relevant Industry Background:

6. Literary agents represent authors with respect to the sale of those authors' original works. Their primary job is to secure publishing contracts for those works from potential publishers. They do that by presenting manuscripts written by the authors to publishers, and then negotiating the necessary contracts if the publisher wants to acquire the manuscript.

7. Around 2010 the market started to change as ebooks became a *thing* in publishing and industry professionals began to take notice. Independently published authors such as Amanda Hocking (*My Blood*

Approves series) and Joe Konrath (Jack Daniels Thriller series) broke out in a big way without any assistance from New York publishers. Many traditionally published authors watched as sales by their independently published counterparts began to far surpass their own. Thus began the rise of the ebook publishing craze and small digital presses popping up all over the country.

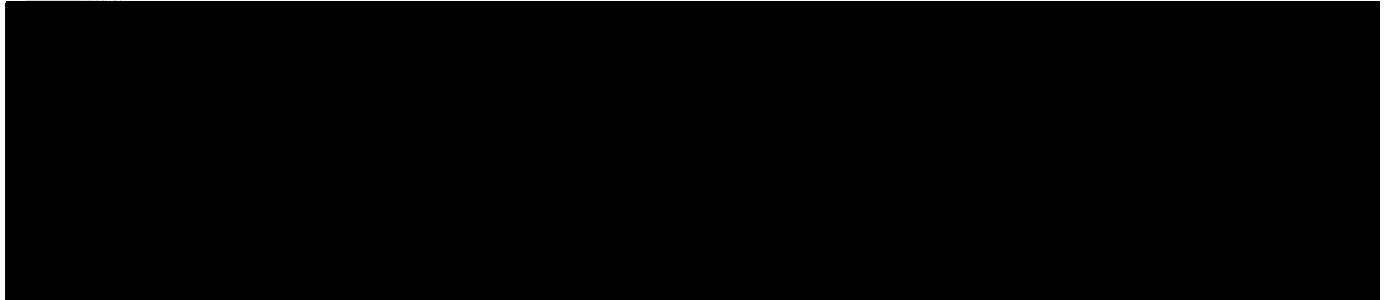
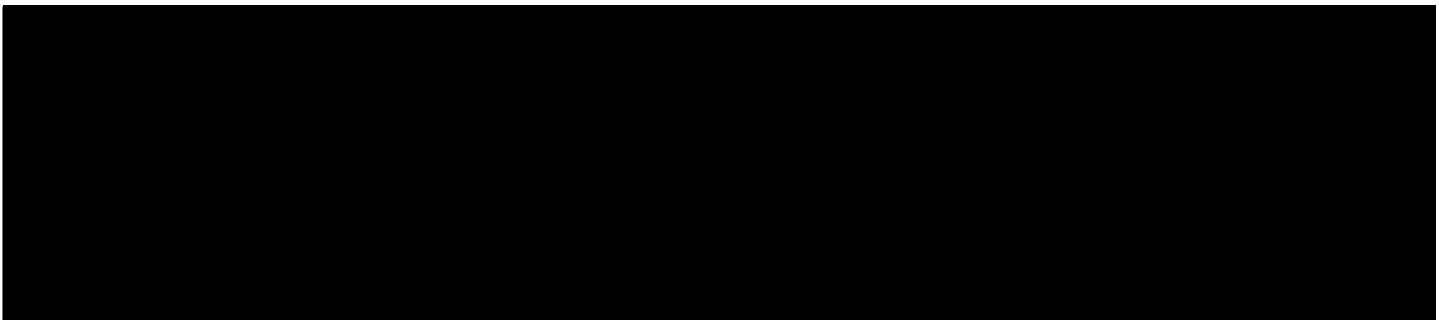
8. As the popularity of independent publishing progressed, there was a steady increase in the number of traditionally published authors who were not renewing their “trad” publishing contracts and becoming hybrid authors (publishing both traditionally and independently) or going indie altogether.

9. Many literary agents’ income took a hit, as they watched some of their biggest earning authors become overnight sensations in the digital market, without them. I experienced this phenomenon first-hand.

10. By 2012-2014, New York publishers found themselves competing against independently published authors for market placement and consumer dollars, particularly in the genre of romance. Independent authors were pricing their books far lower than New York publishers, who had large overheads to cover. This bottomed out the market somewhat and New York publishers began pulling back on their romance print acquisitions and renewing contracts.

11. To better compete, traditional publishers launched ebook or *digital* imprints where they offered little to no advance in exchange for a bigger royalty payout, but by 2016 the market was already becoming oversaturated with romance and it was increasingly difficult to place a book that would stand out. Meanwhile, on the indie side, writers who quit their day jobs to capitalize on the indie publishing gold rush, were now finding it difficult to feed their families with their writing income due to fierce competition and sheer volume of romances being published. The traditional romance market has still not recovered.

12. A separate niche in traditional publishing is “work for hire” (WFH). In a typical WFH situation a publisher hires a writer to write a specific story that fits the publisher’s needs, based on characters and/or a storyline that the publisher gives to the writer.



15. Anyone who understands publishing, particularly with respect to declining traditional advance

16.

Advance

payouts from publisher are often broken up into multiple payments (for example: a payment upon signing, upon delivery of proposal, upon acceptance of manuscript, and sometimes upon publication). When an advance payment is split into smaller payments, i.e. 2, 3, or even 4 payments during the course of the publication process of a book (which can take up to 24 months for each book), the author (and by extension, the agent) might have to wait quite some time to get paid the full amount of the advance. Noting, that an agent normally makes 15-

² This is an industry term reflecting a broad category of the dollar amount for an author's publishing contract. See, e.g., <https://www.publishersmarketplace.com/deals/>. As defined by Publisher's Marketplace, a *Nice Deal* is one up to \$49k. Deals for larger dollar amounts go up from there to *Very Nice Deal*: \$50-\$99k; *Good Deal*: \$100-\$250k; *Significant Deal*: \$251-\$499k, and *Major Deal*: \$500-up

³ *Traditional*: means placed with a traditional publisher

⁴ *Category*: means quick reads or shorter books, aka "dessert books"

⁵ *Small or Digital Presses*: usually give \$0 to a small token amount of an advance payment.

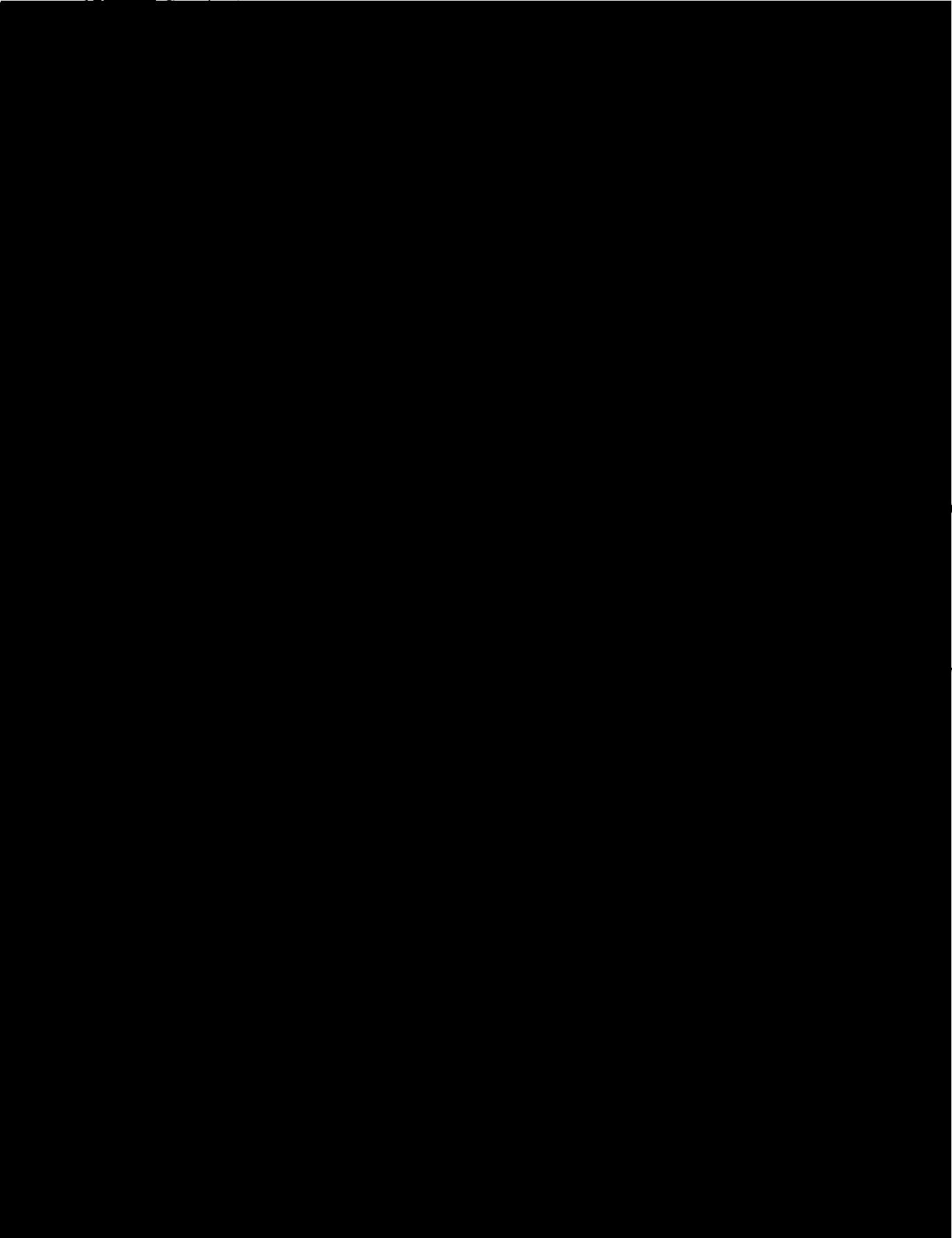
⁶ *WFH*: Work for Hire - payment is often a flat fee when the manuscript(s)/project is delivered and accepted. An author may or may not get royalties.

⁷ A short story is a body of work that ranges between 100-10,000 words in length. Advances are typically nominal, since they are so short.

⁸ A novella is a short body of work that ranges between 20-45k words in length. They can be sold separately or included in a body of work known as an "anthology." Advances for novella are typically very small, since they are not a book-length work.

⁹ An anthology is a collection of poems or other pieces of writing (normally consisting of shorter length works).

20% on all domestic sales and 20-25% on subsidiary and foreign sales. It is clear that there was no growth in Kim's traditional sales, whereas there is a significant increase in her work-for-hire sales overall.



22. There is a saying among agents in publishing, “it’s easier to sell a debut, than it is to sell someone with a mediocre track record.” When a publisher acquires an author, the expectation is that the author will not only earn out their advance, but hopefully have an instant upward trajectory in sales. When an author *doesn’t* meet a publisher’s sales expectations, they may or may not give that author another chance by offering a new contract. If the author, who has less than stellar sales number, does get another chance and their contract is renewed, it’s largely due to their editor fighting for them, or suggesting another way to position that author in the market.

23. There are different reasons why an author writes under different names. One reason is they use different names for different genres. An example of this would be Sally Sunshine writes *steamy erotic romance* under the nom de plume, Sally Shine, but writes *young adult* under the name Sally Moonglow. Sally does this because she is growing two different brands and she doesn’t want her young adult readers to accidentally buy a steamy erotic romance by mistake. Another reason why an author has multiple names is because they had poor sales numbers and they are trying to reinvent themselves, and by extension, their brand.

24. Tracy Deebs-Elkenaney has written under four different nom de plumes: Tessa Adams, Ivy Adams, Tracy Deebs, and Tracy Wolff. Let’s look at each name individually.

1

- ***YouTube Podcast Hank Gardner Interview, March 12, 2021.
Author Stories Podcast Episode 1072, [00:15:00-00:16:00].***

WOLFF: "And about four or five years ago, I went through a really, really, rough period in my life. Like, my life kind of fell apart in a lot of different ways. And, um--and I was really blocked writing for the first time in my life. And, I mean, I don't have a choice. You gotta write." "So, anyway, I...through a bunch of different—like talking to a lot of different friends who, you know, had been blocked before, and this kind of thing, where...You know, the last thing I wanted to do was sit down and write because, you know, thinks were falling apart around me, and I wasn't feeling very creative."

- **KIM and WOLFF text exchanges from October 7, 2021:**

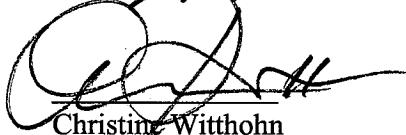
WOLFF: "When I was so depressed and tanking my career, you, Emily, shelly, Sherry, martin, all talked to me." (Bates# **KIM 00348229**)

30. The documents I reviewed in this case that were produced by Emily Kim tell a clear story to anyone familiar with the romance and YA writing markets over the past decade. Tracy Wolff had some success as a

Conclusions

I have rendered all statements and opinions to a reasonable degree of certainty, and I reserve the right to amend my report if any new information becomes available to me.

Dated: May 10, 2023



Christine Witthohn

Exhibit 1

CHRISTINE WITTHOHN

1345 Barnum Avenue, Suite 9, No. 348, Stratford, Connecticut 06614 – U.S.A.
E-mail: cwitthohn@gmail.com Telephone: 203-664-4044

EXPERIENCE:

Book Cents Literary Agency LLC, Stratford, Connecticut

Owner and U.S. & Foreign Rights Executive (01/2005–present)

- Find talent, brainstorm story ideas, write submission letters/synopses/cover blurbs, oversee ads, promotions and brand development;
- Negotiate and manage the sales of a large list of intellectual property; manage and balance royalty payments and statements;
- Work closely with authors, agents, editors/publishers (both foreign and domestic), film agents, translators, and publicists;
- Negotiate domestic and foreign publishing, dramatic, audio, translations, graphic, other sub-rights agreements, for my own agency as well as for other agents/agencies, foreign publishers, independent U.S. publishers, foreign translators, and established indie authors;
- U.S. Sales & Licensing Agent for Edebé, Spanish Children’s Publisher (01/2013–present);
- U.S. Sales & Licensing Agent for Egmont/Lyx, German Publisher (01/2013–2016);
- U.S. Sales & Licensing Agent for Bragelonne, French Publisher (10/2012–2014);
- Sub-rights Agent for Oliver-Heber Books LLC (2021–present)
- Sub-rights Agent for Dragonblade Publishing Inc. (2021–present)
- Attend all major book fairs (Bologna, London & Frankfurt Book Fairs & BEA/NYRF).

Mehalic Law PLLC, Morgantown, WV

Legal and Executive Assistant (03/2001–present)

- Reviewed and negotiated literary agency, publishing, and licensing agreements for authors, translators, and agents/agencies;
- Attended numerous (CLE-continuing legal education) entertainment law seminars and workshops in Los Angeles for negotiating contracts and licensing agreements for literary, professional sports, music, theatrical/dramatic rights, and film/television.
- Legal research and analysis

The Story Vault LLC, Morgantown, WV

Owner and Managing Rights Agent (11/2011–12/2017)

- Owned and managed an assisted self-publishing platform for Book Cents Literary Agency authors, as well as for authors from other agencies;
- Oversaw content acquisitions, production, marketing campaigns, and royalty distribution;
- Negotiated translations and sub-right licenses for all front and backlisted books;

CLASSES & WORKSHOPS: (Leader or instructor)

- *Brainstorming for Writers & Content Creators* – conducted brainstorming workshops in U.S./Europe (04/2010–present);
- Conducted and taught workshops and classes for writers - (Oxford, England/St. Hilda’s College): *Managing Your Rights; Building Your Brand; and Marketing/Promoting Your Book in the Digital Age* (04/2013–01/2016).

AWARDS & PROFFESIONAL ACHIEVEMENTS:

- Nominated for Agent of the Year (chosen by peers/agents and editors) (2010);
- Sponsor of the International Women's Fiction Festival in Matera, Italy (the only writer's conference with access to U.S. and Foreign editors and publishers) (2007–present);
- Professional Member of: Romance Writers of America (RWA); Mystery Writers of America (MWA); AALA - Association of American Literary Agents (formerly AAR);
- Founder of the Global Literary Agent Network (2021–present) (mentoring and sharing information on literary markets around the world).

EDUCATION:

University of Charleston

Bachelor of Science Degree, December 1998

Majors: Biology; Chemistry; Nursing

Honors: President of XBΘ (Scientific Honorary); National Historian Marshall of XBΘ (Highest Honors of the Scientific Honorary).

Exhibit 2

Documents and Reference Material:

- Lynne Freeman v Tracy Deeks-Elkenaney et al. First Amended Complaint
- February 9, 2022 CDAS Letter from defendant's counsel or plaintiff's counsel
- Depositions of: Stacy Abrams, Liz Pelletier, Emily Kim, Tracy Wolff
- Publisher's Marketplace
- Amazon
- NPD BookScan
- <https://apps.dos.ny.gov/publicInquiry/EntityDisplay>
- <https://www.njportal.com/DOR/BusinessNameSearch/Search/BusinessName>
- et al Creative LLC <http://www.etalcreative.com/>
- Prospect Agency LLC <https://www.prospectagency.com/about.html>
- Prospect Agency Agreement (Bates# KIM00352651-00352654)
- Entangled Contract (Bates# ENTANGLED0073254-0073271)
- Entangled Contract Addendums 1-8 (Bates # KIM00332726-0033272, KIM00332719-00332721, KIM00332729-00332731, KIM00332774-00332777, KIM00332750-00332753, KIM00332778-00332781, KIM00332722-00332725, KIM00332715-00332718)
- YouTube Podcast Hank Gardner Interview, March 12, 2021. Author Stories Podcast Episode 1072 <https://youtu.be/oBqw-oWYQ1Q>
- March 18, 2014 Email between Emily Kim to Jenny Bent (Bates# KIM00162414-00162421)
- December 17, 2017 Email from Kim to Payroll-r-Us; Subject: Re: et al (Bates# KIM00330440-00330442)
- August 21, 2018 Email from Emily Kim to Alexandra Chipkin; Subject: IP Projects (Bates# KIM00016603-00016604)
- July 31, 2021 Text exchange between Emily Kim to Tracy Wolff (Bates# WOLFF0097090-0097109)
- Macmillan Distribution Agreement with Entangled (Bates# MACMILLAN0000128-0000156)
- August 7, 2018 Email from Emily Kim to Sue Grimshaw (Bates# KIM000016907-00016914)
- May 1, 2020 Email from Emily Kim to Sasha Hénriques; Subject: Re: Writer for hire search (Bates# KIM00012369-00012377)
- December 12, 2020 Text exchange between Emily Kim to Tracy Wolff (Bates# KIM00349453-00349455)
- October 17, 2021 Text between Emily Kim to Tracy Wolff (Bates# KIM00348229-00348230)
- April 13, 2021 Text between Emily Kim to Tracy Wolff (Bates# KIM00349056-00349057)
- August 1, 2021 Text between Emily Kim to Tracy Wolff (Bates# KIM 00348522-00348523)
- December 5, 2020 Text between Emily Kim to Tracy Wolff (Bates# KIM00349838)
- April 6, 2020 Group Text between Emily Kim, Tracy Wolff, and Liz Pelletier (Bates# ENTANGLED 0074452-0074464)